respondent as the owner. Such doubts could have been resolved by adducing evidence of the number of the NRIC held by the 2nd respondent and should have, of course, been anticipated by the prosecution. This was not done and no proof was adduced. It is not necessary to decide whether the learned magistrate was correct in entertaining such doubts. It is sufficient that this certificate (Exh. P.2) while admissible and where properly admitted is *prima facie* proof of the facts certified therein, had not on the record been proved to have been properly admitted. There is no proof at all that the provisions of the proviso to sub-section (6) of section 143 of the Road Traffic Ordinance 1958 for the service of the certificate on the respondent not less than 10 clear days before the commencement of the trial had been complied with.

The appeal against the acquittal of the 2nd respondent on the first and second charges therefore fails.

Appeal against acquittal of 1st respondent on 2nd charge, allowed;

Appeal against acquittal of 2nd respondent on 1st and 2nd charges dismissed.

WONG KENG SAM & ORS. v. PRITAM SINGH BRAR

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Ambrose J.) August 10. 1968]

[Singapore — Federal Court Civil Appeal No. Y51 of 1967]

Constitutional Law — Public service — Committee of inquiry — When ceases to exist — Whether Public Service Commission entitled to require committee to hear further evidence — Public Service (Disciplinary Proceedings) (Procedure) Rules, 1964 — Whether Rules mandatory or directory — Constitution of Singapore, arts. 75(1) & 80(2) — Constitution of Malaysia, art. 135 (2).

Evidence — Further evidence — Power of inquiry committee to consider.

The appellants in this case were members of a committee of inquiry appointed by the Public Service Commission under rule 4 of the Public Service (Disciplinary Proceedings) (Procedure) Rules, 1964, to inquire into certain charges preferred against the respondent, who was an Assistant Superintendent of Police in the Singapore Police Force. The committee inquired into the charges and reported to the Public Service Commission. Subsequently the Public Service Commission by letter addressed to the 1st appellant as chairman of the committee directed the committee to establish the full facts of the case and in particular to call the Commandant of the Police Training School. Consequently the committee informed the respondent that it would meet to hear further evidence. The respondent through his solicitor objected to such further proceedings and took out proceedings against the appellants for a declaration that the appellants had ceased to hold office as members of the committee of inquiry and that the decision of the appellants to hear further evidence was illegal, void and inoperative. The respondent also sought an injunction to restrain the appellants from hearing further evidence. An application was made for an interlocutory injunction to restrain the appellants from hearing the further evidence. Chua J. heard the application and granted the interlocutory injunction. The appellants appealed.

Held, allowing the appeal: (1) although the Public Service (Disciplinary Proceedings) (Procedure) Rules, 1964, are statutory rules, they are except for such rules as are for the purpose of carrying out the object of article 135(2) of the Constitution of Malaysia, procedural rules which are not mandatory but merely directory, and therefore any breach or non-compliance with any such purely procedural rule or sub-rule does not give a person aggrieved a legal right to redress in a court of law;

(2) as there was no provision in the Rules to say when a committee of inquiry shall cease to exist, the Public Service Commission was entitled to require the committee to consider further evidence;

(3) in this case it would appear that if the action had proceeded to trial, the respondent would *prima facie* fail to obtain the two declarations and consequential injunction sought, and therefore the respondent was not entitled to obtain the interlocutory injunction.

Case referred to:—

(1) *State of U.P.* v. *Babu Ram* A.I.R. 1961 S.C. 751.

FEDERAL COURT.

Ho Thian Cheh (Senior State Counsel) for the appellants.

S. K. Lee for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is an appeal from the decision of Chua J. in chambers in an application for an interlocutory injunction. The relevant facts are these. The plaintiff is a public officer holding the rank of Assistant Superintendent of Police in the Police Service in Singapore. The defendants are members of a committee of inquiry (hereafter referred to as "the said committee") appointed by the Public Service Commission under rule 4 of the Public Service (Disciplinary Proceedings) (Procedure) Rules, 1964 to inquire into certain charges preferred against the plaintiff.

The said committee inquired into the charges on various dates between the 1st of February and the 16th of February 1967.

On the 13th June 1967 the Public Service Commission addressed a letter to the 1st defendant as chairman of the said committee, the relevant portion of which reads as follows:—

"The commission has directed that the full facts of the case be established and that in particular the committee call and hear Mr. Ong Kim Boon Commandant of the Police Training School."

In pursuance of that direction the said committee directed the Permanent Secretary of the Ministry of Interior and Defence to inform

the plaintiff that the said committee had decided to hear further evidence and to be present at the Beach Road Camp on 3rd July 1967 when the said committee would meet to fix suitable dates acceptable to all parties for hearing further evidence.

The plaintiff through his solicitor, by letter dated 26th June 1967 objected to such further proceedings but nevertheless the plaintiff and his solicitor appeared before the said committee on the 3rd July and again objected to such further proceedings. The said committee overruled the objections and fixed the 29th and 30th September 1967 for the hearing of further evidence.

The plaintiff on the 9th September 1967 commenced proceedings by a writ of summons in the High Court of Singapore against the defendants who are the members of the said committee claiming, *inter alia*, the following reliefs:—

(a) A declaration that the first, second and third defendants who purport to be respectively the chairman and members of the committee of inquiry appointed by the Public Service Commission to inquire into charges preferred against the plaintiff ceased to hold such offices after the 4th of March, 1967; and/or alternatively;

(b) A declaration that the decision made by the defendants as conveyed to the plaintiff in a letter addressed to the plaintiff, and dated the 26th of June, 1967, to hear further evidence in the inquiry concerning the plaintiff and/or any steps taken in purported furtherance of the said inquiry were illegal, void, inoperative, of no effect and/or *ultra vires* the Public Service (Disciplinary Proceedings) (Procedure) Rules, 1964;

(c) An injunction to restrain the defendants from hearing further evidence in the aforesaid inquiry on the 29th and 30th of September, 1967, or on any other day and/or taking any steps in purported furtherance of the said inquiry.

The plaintiff then took out the present application for an interlocutory injunction to restrain the defendants who are the three members of the committee of inquiry appointed by the Public Service Commission of Singapore to inquire into charges preferred against the plaintiff to restrain them from hearing further evidence in the said inquiry on the 29th and 30th of September or any other day and/or taking any steps in purported furtherance of the said inquiry until after the trial of the action. Chua J. heard the application and granted the interlocutory injunction.

It is clear law that for the plaintiff to obtain an interlocutory injunction in the terms asked for he must make out a *prima facie* case that he would succeed in his claim for one or other of the two declarations he has sought.

Apart from the power vested constitutionally in the President of Singapore to dismiss at pleasure, the power to exercise disciplinary control over public officers lies with the Public Service Commission of Singapore and is to be found in article 75(1) of the Constitution of Singapore. Article 75(1) reads as follows:—

"Subject to the provisions of this Constitution it shall be the duty of the Public Service Commission to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control over public officers."

Article 80(2) of the Constitution of Singapore enables the Public Service Commission, subject to the provisions of the Constitution, to regulate its procedure and to make rules for that purpose and also enables the Public Service Commission, in connection with the discharge of its functions to confer powers and impose duties on any public officer. Article 80(2) reads as follows:—

"The Public Service Commission may, subject to the provisions of this Constitution, regulate its procedure and make rules for that purpose, and may, in connection with the discharge of its functions, confer powers and impose duties on any public officer or any authority of the Government."

The Public Service Commission on the 22nd October 1964 made rules entitled "The Public Service (Disciplinary Proceedings) (Procedure) Rules, 1964" (hereinafter known as the 1964 Rules) of which rules 3 and 4 are relevant for consideration. The relevant portions of rule 3 read as follows:—

"(1) If it is represented to the Public Service Commission by a Permanent Secretary that a public officer has been guilty of misconduct or neglect of duty and the Public Service Commission is of the opinion that the misconduct or neglect of duty alleged is not serious enough to warrant proceedings under rule 4 of these Rules with a view to dismissal or reduction in rank, the Public Service Commission may cause an investigation to be made into the matter, and the public officer shall be entitled to know the case made against him and shall have a reasonable opportunity of replying thereto."

The relevant provisions of rule 4 read as follows:—

"4.—(1) If it is represented to the Public Service Commission by a permanent secretary that a public officer has been guilty of misconduct or neglect of duty and the Public Service Commission is of opinion that the misconduct or neglect of duty alleged warrants proceedings with a view to dismissal or reduction in rank the Public Service Commission may cause proceedings to be taken under the provisions of this rule.

(2) The public officer shall be notified in writing, by his permanent secretary, of the grounds upon which it is intended to dismiss him or to reduce his rank and he shall be given seven working days within which to exculpate himself in writing. The grounds upon which it is intended to take action against a public officer shall be reduced to the form of a definite charge or charges, together with the statement of allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration.

(3) If the public officer fails to exculpate himself to the satisfaction of the Public Service Commission within the time prescribed in paragraph (2) of this

rule, the Public Service Commission shall appoint a committee (hereinafter in these Rules referred to as "committee") to inquire into the matter.

x x x

(5) The public officer shall be informed of the date when the question of his dismissal or reduction in rank will be brought before the committee.

(6) The public officer shall appear before the committee and shall be entitled to —

(a) cross-examine the witnesses;

(b) give evidence on his own behalf; and

(c) have such witnesses called on his behalf, as he may wish.

(7) The record of the proceedings of the committee shall consist of the evidence adduced before the committee and a report of the committee. The evidence shall not ordinarily be taken in the form of question and answer, but in the form of a narrative. The committee may, in its discretion, require any particular question and answer to be taken down.

(8) The committee may, in its discretion, permit the Government, or the public officer, to be represented by a public officer in the public service or by an advocate and solicitor, and may at any time, subject to such adjournment as in the circumstances may be required, withdraw such permission:

Provided that where the committee permits the Government or the public officer to be represented, it shall not refuse the public officer or the Government, as the case may be, permission to be similarly represented.

(9) The committee shall not be bound to act in a formal manner and shall not be bound by the provisions of the Evidence Ordinance, but may inform itself on any matter in such manner as it thinks just.

(10) No documentary evidence shall be used against the public officer unless he has previously been supplied with a copy thereof or given access thereto.

(11) The committee shall hear the case from day to day, and no adjournment shall be given except for reasons to be recorded in writing. Every adjournment, with reasons therefor, shall be reported forthwith to the permanent secretary. No adjournment shall be given for more than seven working days.

x x x

(13) The committee shall, within fourteen working days of the conclusion of the proceedings, submit its report to the Public Service Commission.

(14) The Public Service Commission may, upon considering the report of the committee, if it is of the opinion —

(a) that the public officer should be dismissed or be reduced in rank, dismiss or reduce the rank of the public officer from such date as it may think fit; or

(b) that some punishment other than dismissal or reduction in rank should be imposed, —

(i) impose some lesser penalty such as stoppage or deferment of increment, fine or reprimand; or

(ii) require the public officer to retire in the public interest if the record of the evidence of the proceedings before the committee disclose grounds for so doing, without further proceedings, under the provisions of rule 6 of these Rules."

The validity of the 1964 Rules have not been questioned before us nor before Chua J. and I proceed on the basis that they have been validly made by the Public Service Commission and that all the rules contained therein are valid rules. It is clear that the 1964 Rules, which I assume have been validly made, have statutory force and it is clear also, in my opinion, that they are designed to give a public officer alleged to be guilty of misconduct or neglect of duty a reasonable opportunity of being heard in answer to such allegations. The right of a public officer to be given a reasonable opportunity of being heard before he is dismissed or reduced in rank is a constitutional right afforded him by article 135 (2) of the Constitution of Malaysia which article has constitutional force in Singapore.

However, although the 1964 Rules have statutory force, it does not follow that any particular rule or sub-rule, if breached or not complied with, will have the effect of giving a legal right to a person aggrieved thereby to redress in a court of law. The law is clear that those of the rules in the 1964 Rules which are made for the purpose of carrying out the object of article 135(2) of the Constitution of Malaysia are mandatory (see *State of U.P.* v. *Babu Ram* [1] where five judges of the Supreme Court of India were unanimously of the view that statutory rules made for the purpose of carrying out the object of article 311(2) of the Indian Constitution which is similar in effect to our article 135(2) are mandatory). In my opinion any rule or sub-rule in the 1964 Rules which cannot on its true construction, be said to be made for the purpose of carrying out the object of article 135 (2) are not mandatory but are merely directory as being purely procedural rules. In my opinion any breach or non-compliance with any such purely procedural rule or sub-rule does not give a person aggrieved thereby a legal right to redress in a court of law.

The claims in the present action are not based on any allegation that any of the 1964 Rules have not been complied with by the said committee appointed by the Public Service Commission under rule 14(3) to inquire into the charges against the plaintiff. The first claim is for a declaration that after the 4th March 1967, that is, 14 days after the conclusion of the proceedings before the committee of inquiry, the three defendants being the members of the committee of inquiry ceased to hold such offices i.e. that the defendants were *functus officio*.

The second claim made by the plaintiff is for a declaration that the defendants' decision made after the 4th March 1967 to hear further evidence in the inquiry or any steps taken in purported furtherance of the inquiry were illegal, void, inoperative, of no effect and/or *ultra vires* the 1964 Rules.

The plaintiff to establish a *prima facie* case relies on rule 4(11) and (13) and contends that having regard to these two sub-rules, in the events that have happened, the proceedings against him before the said committee were concluded and not merely adjourned on the 4th of March 1967 and that therefore as from that date the said committee was *functus officio*, and being *functus officio*, could not lawfully continue to function in any manner whatsoever as a committee of inquiry under the 1964 Rules to inquire into the charges against the plaintiff.

I am of the opinion that this argument is unsound. Even if on the true construction of sub-rules (11) and (13), the act of the Public Service Commission in directing the said committee to sit and hear further evidence and the decision of the said committee to comply with that direction and thereby in fixing further dates for the plaintiff to be present when further evidence is heard can be said to amount to an attempt to disregard these two sub-rules, I am of the opinion that sub-rules (11) and (13) are purely procedural rules which are clearly directory and not mandatory in the sense that a breach or disregard of any of these two sub-rules would give a legal right to a person aggrieved thereby to redress in a court of law. Such a committee of inquiry is not a judicial tribunal of which it can be said that once these proceedings are concluded and a decision made by it on the matter to be adjudicated by it that it is *functus officio* and thereby has no more jurisdiction in the matter. All that the committee of inquiry under the 1964 Rules can do after inquiring into the matter is to submit a report to the Public Service Commission. There is nothing in the 1964 Rules specifying in what form the report of the committee of inquiry should be. Such a report may well take the form merely of an opinion based on all the evidence that has been brought before it by both sides or, it may well be in the form of an opinion together with recommendations or, it may well be in the form of an opinion together with advice or, it may well be in some other form.

The 1964 Rules contain no provisions as to when a committee of inquiry appointed under sub-rule (3) of rule 4 shall cease to exist. It seems to me therefore the Public Service Commission, the appointing authority, is entitled as such appointing authority to require the three defendants, being the committee of inquiry appointed to inquire into the charges against the plaintiff, to consider further evidence, by way of hearing the evidence of a fresh witness and to sit for that purpose. The step taken by the committee of inquiry to call upon the plaintiff to appear before it to fix a date suitable to the plaintiff and his counsel is in my opinion an essential step so as to comply with the constitutional safeguard provided by article 135(2) of the Constitution of Malaysia.

It seems to me therefore that if the action proceeds to trial, the plaintiff would *prima facie* fail to obtain the two declarations and the consequential injunction sought by him in his statement of claim. In my judgment this appeal must be allowed.

Tan Ah Tah F.J. concurred.

Ambrose J. did not deliver any judgment, his Lordship having since the hearing of the appeal retired.

Appeal allowed.

Solicitors: *S. K. Lee & Co.*

SIME DARBY SINGAPORE LTD. & ANOR. v. BEECHAM GROUP LTD.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Winslow J.) August 10, 1968]

[Singapore—Federal Court Civil Appeal No. Y 55 of 1967]

Patents — Infringement of — Importation and sale of drug — Pharmaceutical and clinical differences — Injunction — Registration of United Kingdom Patents Ordinance (Cap. 181).

The Singapore High Court ([1968] 1 M.L.J. 86) granted an interlocutory injunction against both appellants restraining them until judgment in the action from advertising, offering for sale, selling or supplying the antibiotic hetacillin or any preparation containing the same or otherwise infringing either or both of the plaintiffs' Letters Patent Nos. 870395 and 873049 which have been registered in Singapore under the provisions of the Registration of United Kingdom Patents Ordinance. The appellants now appealed against this decision.

The first appellants Sime Darby imported into and sold in Singapore the antibiotic hetacillin. The second appellant, Bristol-Myers, an American corporation, manufactured the hetacillin imported into Singapore by Sime Darby. The respondents, Beecham, succeeded in isolating a semi-synthetic penicillin known as ampicillin. Beecham claimed that hetacillin was in substance the equivalent of ampicillin and they also claimed that hetacillin was manufactured by the use of their patented process so as to amount to an infringement of both their patents. More specifically Beecham contended that as hetacillin was in substance the medical equivalent of ampicillin there was infringement of claims 1, 2, 3, 5 and 20 of Patent 873049, which were product claims, by the sale of hetacillin in Singapore. Beecham also contended that having regard to the *Saccharin* [1] principle there was infringement of the same five product claims of the said patent by the importation and sale in Singapore of hetacillin. With regard to their process claims Beecham contended that on the *Saccharin* principle there was infringement of claim 1 of Patent 870395 and claim 12 of Patent 873049 because hetacillin is made by a process which is almost identical with the process of making ampicillin.

Held: (1) Bristol-Myers used a process in the manufacture of hetacillin which was covered by claim 12 of Beecham's Patent No. 873049. On the evidence the use by Bristol-Myers of Beecham's process in the course of the manufacture by them of hetacillin cannot